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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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12 MEDICAL DEVELOPMENT
13 INTERNATIONAL, a Delaware
corporation,

14 Plaintiff,

15 v.

NO. CIV. S-07-2199 WBS EFB

ORDER RE: MOTION TO DISMISS

16 CALIFORNIA DEPARTMENT OF
17 CORRECTIONS AND REHABILITATION;
18 ROBERT SILLEN, in his individual
capacity; J. CLARK KELSO, in his
19 official capacity as Receiver;
and DOES 1 through 20,
inclusive,

20 Defendants.
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23 Defendants Robert Sillen, J. Clark Kelso, and the
24 California Department of Corrections and Rehabilitation ("CDCR")
25 move to dismiss this action for lack of subject matter
26 jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of
27 Civil Procedure.

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1 I. Factual and Procedural Background

2 On October 3, 2005, in Plata v. Schwarzenegger, No.
3 01-1351, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005),¹ a class
4 action challenging the constitutional adequacy of medical care
5 provided to CDCR inmates with serious medical needs, United
6 States District Judge Thelton E. Henderson established a
7 Receivership to manage the health care systems at the CDCR's
8 various institutions in an attempt to bring the medial care up to
9 constitutional standards. Judge Henderson subsequently appointed
10 defendant Sillen as the Receiver on February 14, 2006 (effective
11 April 17, 2006) and charged him with the "duty to control,
12 oversee, supervise, and direct all administrative, personnel,
13 financial, accounting, contractual, legal, and other operational
14 functions of the medical delivery component of the CDCR." Plata
15 v. Schwarzenegger, No. 01-1351, slip op. at 2 (N.D. Cal. Feb. 14,
16 2006) ("Order Appointing Receiver") (hereinafter "OAR").

17 In a subsequent order on March 30, 2006, Judge
18 Henderson directed the CDCR, now under the control of Sillen, to
19 begin developing new processes for medical contract management.

21 ¹ When ruling on a motion to dismiss, the court generally
22 may not consider materials other than the facts alleged in the
23 complaint and documents that are made a part of the complaint.
24 Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir. 1996); Branch v.
25 Tunnell, 14 F.3d 449, 454 (9th Cir. 1994), overruled on other
26 grounds by Galbraith v. County of Santa Clara, 307 F.3d 1119 (9th
27 Cir. 2002). A court may, however, consider materials if (1) the
28 authenticity of the materials is not disputed and (2) the
plaintiff has alleged the existence of the materials in the
complaint or the complaint "necessarily relies" on the materials.
Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)
(citation omitted); Branch, 14 F.3d at 454. Because the
authenticity of Judge Henderson's opinions in the Plata line of
cases is not disputed and plaintiff repeatedly relies on them,
the court will properly consider these rulings.

1 Plata v. Schwarzenegger, No. 01-1351, slip op. at 5-7 (N.D. Cal.
2 Mar. 30, 2006). Around this same period, the CDCR entered into
3 negotiations with plaintiff--an administrator of prison health
4 care systems--to provide specialty medical services for inmates
5 at two California correctional facilities as part of a pilot
6 program.² (Compl. ¶¶ 8, 20-21.) In early September 2006, CDCR
7 officials permitted plaintiff to begin performing services at the
8 two institutions notwithstanding the absence of a final executed
9 contract. (Id. at ¶¶ 25-27.)

10 Shortly after plaintiff began providing its services,
11 the CDCR staff--noting that plaintiff was not licensed to
12 practice medicine in California--questioned whether plaintiff was
13 functioning in violation of California's prohibition on the
14 corporate practice of medicine.³ (Id. at ¶¶ 33-34.) By December
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16 ² During the preliminary contract negotiations, plaintiff
17 proposed that its services would consist of

18 (a) Enter[ing] agreements with physicians and hospitals
19 to perform medical services at the request of prison
20 medical staff; (b) Assist[ing] prison staff in locating
21 medical specialists outside [plaintiff's] referral
22 network; (c) Implement[ing] a centralized system for
23 scheduling and tracking in and outpatient care; and (d)
24 Implement[ing] a centralized billing system for payment
25 health-care providers.

26 (Compl. ¶ 21.)

27 ³ California's statute codifying the "corporate practice
28 of medicine" doctrine provides:

Corporations and other artificial legal entities shall
have no professional rights, privileges, or powers.
However, the Division of Licensing may in its discretion,
after such investigation and review of such documentary
evidence as it may require, and under regulations adopted
by it, grant approval of the employment of licensees on
a salary basis by licensed charitable institutions,
foundations, or clinics, if no charge for professional

1 26, 2006, plaintiff purportedly composed a restructured agreement
2 designed to eliminate this concern and sent it to the CDCR's
3 Division of Correctional Health Care Services for signature.
4 (Id. at ¶ 35.) Plaintiff claims that Sillen then intercepted the
5 agreement before it reached its destination, and thus it was
6 never signed. (Id. at ¶¶ 36-37.)

7 In January 2007, amid the ongoing concerns regarding
8 the legality of plaintiff's services, Sillen called for a halt to
9 the CDCR's processing of plaintiff's final contract and ordered
10 the CDCR to stop further payments on plaintiff's invoices. (Id.
11 at ¶¶ 36-37.) Plaintiff nonetheless continued providing services
12 without compensation. (Id. at ¶ 42.) During a February 16, 2007
13 meeting, Sillen renewed his concerns to plaintiff regarding the
14 legality of its services and indicated that plaintiff could be
15 paid only if it was determined that it could lawfully provide
16 services in California. (Id. at ¶ 44.) Plaintiff again
17 continued to provide services to the two institutions,
18 purportedly in reliance on "Mr. Sillen's representations
19 regarding future payment." (Id. at ¶ 45.)

20 On March 7, 2007, plaintiff provided Sillen with a
21 legal memorandum--drafted by its counsel--that concluded its
22 services were being lawfully provided. (Id. at ¶ 46.) Sillen
23 "refused to accept the opinion," ultimately demanding that
24 plaintiff obtain an official opinion from the Medical Board of
25 California. (Id. at ¶¶ 47-48.) When plaintiff failed to

26 services rendered patients is made by any such
27 institution, foundation, or clinic.

28 Cal. Bus. & Prof. Code § 2400.

1 promptly comply with his demand, Sillen effectively ended their
2 relationship when he allegedly "physically expelled Plaintiff['s]
3 personnel" from the two CDCR pilot program institutions on April
4 7, 2007. (Id. at ¶¶ 50-51.)

5 On September 17, 2007, plaintiff filed a complaint in
6 Sacramento Superior Court against Sillen and the CDCR. In its
7 Complaint, plaintiff alleges fifteen state law causes of action
8 arising from its purported reliance on certain misrepresentations
9 that Sillen and the CDCR made throughout the preliminary contract
10 negotiations. On October 16, 2007, Sillen removed the action to
11 this court pursuant to 28 U.S.C. § 1442(a)(1).⁴

12 On January 23, 2008, Judge Henderson dismissed Sillen
13 as Receiver, simultaneously appointing J. Clark Kelso as the new
14 Receiver. Pursuant to Federal Rule of Civil Procedure 25(d)(1),
15 Kelso, in his official capacity as Receiver, was "automatically
16 substituted as a party" in place of Sillen. Fed. R. Civ. P.
17 25(d)(1). This substitution was effective only to the extent
18 that Sillen was sued as the Receiver, and thus the individual
19 causes of action against Sillen still remain. Collectively,
20 defendants now move to dismiss the complaint for lack of subject
21 matter jurisdiction.

22 II. Discussion

23 Because federal courts are courts of limited
24 jurisdiction only authorized to adjudicate those cases which the
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26 ⁴ Section 1442(a)(1) allows for removal of civil actions
27 commenced in state court against "any officer (or any person
28 acting under that officer) of the United States or of any agency
thereof, sued in an official or individual capacity for any act
under color of such office." 28 U.S.C. § 1442(a)(1).

1 Constitution and Congress permit, Kokkonen v. Guardian Life Ins.
2 Co. of Am., 511 U.S. 375, 377 (1994), Federal Rule of Civil
3 Procedure 12(b)(1) allows a court to dismiss cases
4 inappropriately brought before it based on a lack of subject
5 matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "A federal court
6 is presumed to lack jurisdiction in a particular case unless the
7 contrary affirmatively appears." Stock W., Inc. v. Confederated
8 Tribes of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir.
9 1989) (citing Cal. ex rel. Younger v. Andrus, 608 F.2d 1247, 1249
10 (9th Cir. 1979)). On a motion to dismiss an action for lack of
11 subject matter jurisdiction, the plaintiff bears the burden of
12 establishing that subject matter jurisdiction exists. Kokkonen,
13 511 U.S. at 377.

14 1. The Barton Rule

15 The United States Supreme Court has held that federal
16 common law bars suits against receivers in courts other than the
17 court charged with the administration of the estate. Barton v.
18 Barbour, 104 U.S. 126, 127 (1881). Thus, "a party must first
19 obtain leave of the [appointing] court before it initiates an
20 action in another forum" against a receiver. Beck v. Fort James
21 Corp. (In re Crown Vantage, Inc.), 421 F.3d 963, 970 (9th Cir.
22 2005) (citing Muratore v. Darr, 375 F.3d 140, 147 (1st Cir.
23 2004); Carter v. Rodgers, 220 F.3d 1249, 1252 (11th Cir. 2000);
24 In re Linton, 136 F.3d 544, 546 (7th Cir. 1998); Lebovits v.
25 Scheffel (In re Lehal Realty Assocs.), 101 F.3d 272, 276 (2d Cir.
26 1996); Allard v. Weitzman (In re DeLorean Motor Co.), 991 F.2d
27 1236, 1240 (6th Cir. 1993)); see also Davis v. Gray, 83 U.S. 203,
28 218 (1872) (holding that the court appointing a receiver "will

1 not allow him to be sued touching the property in his charge, nor
2 for any malfeasance as to the parties, or others, without [the
3 court's] consent").

4 This doctrine, known as the Barton Rule, ensures that
5 the appointing court maintains appropriate control over the
6 administration that is the subject of the receivership. In re
7 DeLorean, 991 F.2d 1236, 1240 (6th Cir. 1993). When presented
8 with a party that has failed to secure the appointing court's
9 consent, the nonappointing court lacks subject matter
10 jurisdiction and must dismiss the action. See In re Kashani, 190
11 B.R. 875, 884 (B.A.P. 9th Cir. 1995) ("[N]onappointing court may
12 not entertain suits against the [receiver] for acts done in the
13 [receiver's] official capacity without leave from the appointing
14 court because the other court lacks subject matter
15 jurisdiction.").

16 2. Limited Statutory Exception to the Barton Rule

17 Plaintiff concedes that it did not seek Judge
18 Henderson's permission prior to suing Sillen, and now Kelso. In
19 an effort to avoid dismissal, plaintiff asserts that it is not
20 obligated to request leave because the Receiver's alleged conduct
21 fits the statutory exception to the Barton Rule--codified under
22 28 U.S.C. § 959(a), which provides that leave of the appointing
23 court is not required when receivers are sued "with respect to
24 any of their acts or transactions in carrying on the business
25 connected with [receivership] property." 28 U.S.C. § 959(a).

26 Despite its seemingly expansive language, § 959(a) is
27 rarely employed and--when actually utilized by courts--even more
28 narrowly applied. See Beck v. Fort James Corp. (In re Crown

1 Vantage, Inc.), 421 F.3d 963, 971-72 (9th Cir. 2005) ("By its
2 terms, this limited exception applies only if the trustee or
3 other officer is actually operating the business, and only to
4 'acts or transactions in conducting the debtor's business in the
5 ordinary sense of the words or in pursuing that business as an
6 operating enterprise.'" (quoting Muratore v. Darr, 375 F.3d 140,
7 144 (1st Cir. 2004))). In fact, the relatively small handful of
8 cases interpreting § 959(a) restrict its application to instances
9 where a receiver or trustee has been sued in his/her capacity as
10 an employer, or for torts committed by agents of the
11 estate/business in receivership during the course of routine or
12 day-to-day operations distinct from the receiver's official
13 responsibilities. See id. at 972 (noting that "[t]he few
14 examples of suits that have been allowed under § 959(a) include a
15 wrongful death action filed against an operating railroad trustee
16 and suits for wrongful use of another's property").

17 Unlike the cases where leave was not required,
18 plaintiff's causes of action against Sillen do not arise from
19 tortious conduct or negligent acts pursuant to day-to-day,
20 routine, or ordinary business operations unrelated to his
21 official responsibilities. Rather, plaintiff challenges the very
22 core of Sillen's authority and administration of the CDCR medical
23 services system--i.e., duties explicitly prescribed in Judge
24 Henderson's creation of the receivership. See id. (noting that
25 "[a]ctions taken in the mere continuous administration of
26 property under order of the court do not constitute an 'act' or
27 'transaction' in carrying on business connected with the estate"

1 under § 959(a)) (internal quotations and citations omitted)
2 (emphasis added).

3 In Plata, Judge Henderson charged the receivership with
4 the "duty to control, oversee, supervise, and direct all
5 administrative, personnel, financial, accounting, contractual,
6 legal, and other operational functions of the medical delivery
7 component of the CDRC." OAR at 2 (emphasis added). Judge
8 Henderson supplemented this responsibility by explicitly
9 providing that, in deployment of the aforementioned duties and
10 directives, "the Receiver and his staff shall have the status of
11 officers and agents of this Court, and as such shall be vested
12 with the same immunities as vest with this Court." Id. at 6.

13 Because plaintiff's lawsuit challenges Sillen's conduct
14 in terminating whatever quasi-contractual relationship may have
15 existed when he suspected illegality on the part of plaintiff,
16 the lawsuit challenges Sillen's conduct in performing the very
17 duties Judge Henderson set up the receivership to perform. Thus,
18 absent Judge Henderson's permission, the Receiver cannot be sued
19 in any jurisdiction other than that of the appointing court. See
20 Carter v. Rodgers, 220 F.3d 1249, 1254 (8th Cir. 2000) (section
21 959 does not apply when a party contests the receiver's general
22 management and control of the receivership, thus interfering with
23 the receiver's mandate to realize his judicial directive).

24 Significant interests of public policy support the
25 conclusion that Judge Henderson should have be apprised of the
26 instant matter and be given the initial option to hear the
27 allegations. Specifically, the importance of this matter cannot
28 be separated from its critical backdrop. Unlike typical

1 receiverships or trusts employed in bankruptcy courts, this is a
2 receivership over a public entity involving matters of
3 constitutional significance. In his original Plata decision,
4 Judge Henderson identified an "unconscionable degree of suffering
5 and death sure to continue if the system is not dramatically
6 overhauled." Plata v. Schwarzenegger, No. 01-1351, 2005 WL
7 2932253, at *1 (N.D. Cal. Oct. 3, 2005). In an effort to
8 catalyze reform and rehabilitate this "institutional paralysis,"
9 id., Judge Henderson charged the receivership with the express
10 duties that the instant matter now challenges. Judge Henderson
11 would thus be in the best position to evaluate the Receiver's
12 conduct.

13 Moreover, all of the funds in the hands of the Receiver
14 are public funds. (Def's Reply Mem. in Supp. of Mot. 11:9-11).
15 How those funds should be spent, and the manner in which medical
16 services contracts are awarded and administered in prisons, are
17 all questions appropriate for the appointing court administering
18 the property in receivership. See Barton v. Barbour, 104 U.S.
19 126, 136 (1881) (allowing party to proceed without appointing
20 court's perspective on the impact of the litigation could result
21 in the "usurpation of the powers and duties which belonged to
22 another court").

23 3. Causes of Action Against the CDCR

24 The bulk of plaintiff's allegations against the CDCR
25 arise from the CDCR's compliance with Sillen's orders to
26 discontinue payments to plaintiff and withhold the processing of
27 a finalized contract. Because Judge Henderson suspended the
28 CDCR's authority over "the administration, control, management,

1 operation, and financing of the California prison medical health
2 care system" for the duration of the receivership and transferred
3 that authority to Sillen, OAR 4, the CDCR's projects and
4 activities were exclusively under the control of Sillen.⁵ See
5 OAR 8 (mandating that all agents and employees of the CDCR are to
6 "fully cooperate with the Receiver in the discharge of his
7 duties") (emphasis in original). Thus, due to the significant
8 overlap in plaintiff's allegations, the interests of judicial
9 economy also support the accompanying dismissal of plaintiff's
10 causes of action with respect to the CDCR.

11 Accordingly, because plaintiff did not obtain leave
12 from the appointing court before initiating this action, the
13 court will grant defendants' motion to dismiss for lack of
14 subject matter jurisdiction.⁶

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18 ⁵ In an attempt to highlight separate liability as to the
19 CDCR, plaintiff claims that Sillen, subsequent to his designation
20 as Receiver, delegated contractual authority back to the CDCR by
21 allowing then-CDCR director to "retain direct management over the
22 daily operation of the prison medical delivery system." (Compl.
23 ¶ 18.) Not only is this allegation thoroughly unsupported and
24 thus conclusory, see Clegg v. Cult Awareness Network, 18 F.3d
25 752, 754-55 (9th Cir. 1994) ("[T]he court is not required to
accept legal conclusions cast in the form of factual allegations
if those conclusions cannot reasonably be drawn from the facts
alleged."), but the proffered language itself does not support
the interpretation that Sillen intended to delegate his official
authority to control CDCR contracts.

26 ⁶ Because the court grants defendants' motion to dismiss,
27 it need not consider the parties' cross-motions to strike
28 extrinsic evidence and exhibits. The subject of the cross-
motions--various declarations and party briefs from the Plata
line of cases--were not integral to the legal disposition of this
matter and thus were not considered.

1 IT IS THEREFORE ORDERED that defendants' motion to
2 dismiss plaintiff's complaint be, and the same hereby is,
3 GRANTED.

4 DATED: February 14, 2008

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7 WILLIAM B. SHUBB

8 UNITED STATES DISTRICT JUDGE
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